Supreme Court, U.S.
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NO._____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

JOHN YIAMOUYIANNIS
Petitioner

v.

WILLIAM LOWE,
THE DELAWARE COUNTY AGRICULTURAL SOCIETY,
THE DELAWARE COUNTY FAIR BOARD,
CHRISTOPHER FRNETSOS, AND JOHN DOES, 1-10
Respondents

PETITION FOR WRIT OF CERTIORI TO THE SUPREME COURT OF OHIO

JOHN YIAMOUYIANNIS
Pro Per
6439 Taggart Road
Delaware, Ohio 43015
(614) 548-5340

46 pp

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PETITION FOR WRIT OF CERTIORI TO THE SUPREME COURT OF OHIO

To The Honorable Chief Justice And The Associate Justices Of The Supreme Court Of The United States:

The petitioner herein prays that a writ of certiori issue to review the judgment of the 5th Court of Appeals and the Supreme Court of the State of Ohio entered in the above-Entitled cause on the 14th day of May, 1997.

I

QUESTIONS PRESENTED

Does United States v. Marsha Kokinda, et al. 497 US 720, 111 L Ed 2d 571 110 S Ct 3115, in acknowledging a difference between distributing literature and soliciting, protect Petitioner's actions on the Delaware County Fairgrounds?

Does International Society for Krishna Consciousness, Inc. v. Evans 440 F. Supp. 414 (S.D. Ohio 1977) give the Respondents the right to evict the Petitioner from the Delaware County Fairgrounds if the petitioner was not soliciting?

Do USC 1985(1) and especially USC 1985(3), which states:

> "If two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of any qualified person as . . . a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy . . . the party so injures or deprived may have an action for recovery of damages"

apply to Petitioner, who was engaged in his own Congressional campaign at the time he was evicted from the Delaware County Fairgrounds?

Does the 14th Amendment of the U.S. Constitution protect the Petitioner from discrimination in the application of local rules?

INDEX

Page

OPINIONS BELOW 2

JURISDICTION 2

CONSTITUTIONAL AND STATUORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 7

REASONS FOR GRANTING THE WRIT 12

CONCLUSION 16

APPENDIX A 1a

APPENDIX B 18a

APPENDIX C 25a

TABLE OF AUTHORITIES CITED

CASES Page

Amalgamated Food Employees Union Local 500 v. Logan Valley Plaza (1968), 391 U.S. 308, 88 S. Ct. 1601, 20 L.Ed.2d 603 11

Heffron v. ISKCON, at 653, 69 L Ed 2d 298, 101 S Ct 2559 9

Hynes v. Metropolitan Government of Nashville and Davidson County, Tennessee, 478 F.Supp 9 (M.D. Tennessee 1979) 10

International Society for Krishna Consciousness, Inc. v. Evans 440 F. Supp. 414 (S.D. Ohio 1977) 9, 10

Marsh v. Alabama (1946), 326 U.S. 501, 66 S.Ct. 276, 90 L.Ed 265 11

State v. Rose 44 Ohio Misc 17, 335NE 2d 758 ..... 10, 11

United States v. Belsky, 799 F2d 1485, 1489 (CA11 1986) . 9

United States v. Marsha Kokinda, et al. 497 US 720, 111 L Ed 2d 571 110 S Ct 3115 8

OPINIONS BELOW

The opinion of the Fourth District of Appeals of Ohio is not reported, but is printed in the Appendix herein. The Ohio Supreme Court declined jurisdiction and dismissed the appeal on May 14th, 1997.

JURISDICTION

Judgment became final on May 14th, 1997. This petition was filed within 90 days in accordance with Rule 13.1 of the Supreme Court. The jurisdiction of the Supreme Court is invoked under Supreme Court Rule10 b and c.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment to the U.S. Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Fourteenth Amendment to the U.S. Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, (excluding Indians not taxed). But when the right to vote any any election for the choice of electors for President and Vice President of the United States, representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a senator or representative in Congress, or elector of President and Vice Presidetn, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts

incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss of emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

42 U.S.C. Section 1981

(a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, and conditions of the contractual relationship.

(c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U.S.C. Section 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. Section 1985

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from
accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his officeal duties.

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any part or witness in any court of the United States from

attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspoire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, opr attempting to enforce, the right of any persons, or class of persons, to the equal protection of the laws;

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any persons or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United

States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

STATEMENT OF THE CASE

The suit was filed by the Petitioner, John Yiamouyiannis, a candidate for the United States Congress at the time the incident complained of occurred. He sued William Lowe, the Delaware County Agricultural Society, the Delaware County Fair Board, Christopher Frentsos, and John Does 1-10, Respondents. The suit alleged that the Respondents acted individually and also conspired to deprive the petitioner of his Constitutional rights as provided for by theFirst and Fourteenth Amendments of the U.S. Constitution and of his civil rights as provided by 42 USC 1981, 42 USC 1983, 42 USC 1985(1), and 42 USC 1985(3).

ThePetitioner alleges the the Respondents restrained him from passing out information regarding his Congressional campaign, by asking him to leave the fairgrounds, by threatening to throw him off the fairgrounds, by arresting him, by evicting hım from the fairgrounds for trespassing, by breaking down his booth at the fair and/or evicting his coworkers. The Petitioner alleges he had the right to speak freely on

county property under the control of the Delaware County Fair Board if he was not causing a public disturbance, was not interfering with the flow of traffic, and was not soliciting money. The Trial Court granted summary judgment to the Respondents holding among other things, that the Delaware County Agricultural Board was not acting under color of state law. The Court of Appeals overturned this finding, holding that the Delaware County Agricultural Board was acting under color of state law, but that the Petitioner was a vendor and as such, he was in violation of state regulations and an exhibitor contract he signed and therefore gave up his rights.

Petitioner, John Yiamouyiannis, seeks this Writ of Certiorari. For Summary Judgment purposes, the facts alleged in his petition must be assumed to be true.

There was uncontested testimony that the Petitioner handed out literature without interfering with the flow of traffic and without causing a public disturbance).

Nowhere in the record is there any evidence that the Petitioner asked anyone for money. Nowhere in the record is there any evidence that Petitioner even asked for a vote. Petitioner was exercising one of the most highly protected forms of free speech, that of political free speech. The courts have been clear in distinguishing between soliciting and other more privileged forms of speech.

In *United States v. Marsha Kokinda, et al.* 497 US 720, 111 L Ed 2d 571 110 S Ct 3115, the majority opinion acknowledged a difference between distributing literature and soliciting, pointing out:

> "it is not unreasonable to prohibit solicitation on the ground that it is unquestionably a particular form of speech that is disruptive of business. Solicitation impedes the normal flow of traffic. See *Heffron, supra*, at 653, 69 L Ed 2d 298, 101 S Ct 2559. Solicitation requires action by those who would respond: the individual solicited must decide whether or not to contribute (which itself might involve reading the solicitor's literature or hearing his pitch), and then, having decided to do so, reach for a wallet, search it for money, write a check, or produce a credit card. See record, Exh 5 (credit card receipt): see also *United States v. Belsky*, 799 F2d 1485, 1489 (CA11 1986) ("Soliciting funds is an inherently more intrusive and complicated activity than distributing literature"). As residents of metropolitan areas know from daily experience, confrontation by a person asking for money disrupts passage and is more intrusive and intimidating than an encounter with a person giving out information."

111 L Ed 2d 586. It is clear that the Petitioner was "distributing literature" or "giving out information" and not soliciting.

In *International Society for Krishna Consciousness, Inc. v. Evans* 440 F. Supp. 414 (S.D. Ohio 1977), the Krishnas wanted to practice a ritual known as "Sankirtan" throughout the Ohio State Fair.

> "Sankirtan is commonly practiced by approaching a member of the public and offering the person a small token gift, such as a flower or incense stick. If further interest is shown, the person is offered a magazine or book and an attempt is made to explain the purposes

> of the Krishna Consciousness religion and to solicit a voluntary donation . . . Plaintiffs indicated at the time their desire to practice Sankirtan at the Ohio State Fair . . . the representatives of Expo advised plaintiffs that regulations prohibited roving solicitations and therefore unrestricted Sankirtan would be impossible.

d. at 417. It is obvious that this case, as well as *Hynes v. Metropolitan Government of Nashville and Davidson County, Tennessee*, 478 F.Supp 9 (M.D. Tennessee 1979)[, which also deal with the practice of sankirtan,] does not pertain to the instant case. There, unlike the Petitioner, the plaintiffs were involved in soliciting donations. In simple point of fact, the roving vendor and solicitation laws, regulations, and rules, did not apply to the Petitioner.

In *State v. Rose* 44 Ohio Misc 17, 335NE 2d 758, the Constitutional right of the defendant to peacefully distribute handbills even in a private shopping center in Toledo, Ohio was upheld.

> "On each of two occasions, resulting in these two charges of criminal trespass, Richard C. Rose, the defendant, was peacefully distributing handbills or leaflets to passers-by in the enclosed area of the mall directly in front of the entrance to Albert's Ladies Wear and not blocking ingress or egress thereto . . . On November 8, 1974 and again November 15, 1974, while engaged in this activity, Rose was ordered to cease by an off-duty deputy sheriff as an agent for the mall. When Rose refused to leave or stop distributing these handbills he was placed under arrest on each occasion for criminal trespass."

Citing among other cases, *Marsh v. Alabama* (1946), 326

U.S. 501, 66 S.Ct. 276, 90 L.Ed 265 and *Amalgamated Food Employees Union Local 500 v. Logan Valley Plaza* (1968), 391 U.S. 308, 88 S. Ct. 1601, 20 L.Ed.2d 603, the court found that

> "Defendant was engaged in peaceful conduct not obstructing ingress or egress to Albert's. Defendant's conduct was within the ambit of protection provided by the First and Fourteenth Amendments to the U.S. Constitution and therefore the motion to dismiss [the charges of criminal trespass] is found well taken and granted."

Furthermore, even if the "Exhibitor's Rule No. 2" was constitutional on its face and applicable to the Petitioner, it was applied in an unconstitutional fashion with regard to its enforcement. Respondents failed to enforce "Exhibitor's Rule No. 2" against Judge Everett Krueger in the same manner as it did against Petitioner. The court of appeals noted that Judge Krueger was warned that he refrain from passing out campaign literature on either September 17, 18, or 19, 1994 and the record shows he was still passing out literature on September 21, 1994. The statement by the court of appeals that "when warned, Judge Krueger acknowledged said warning(s) and complied" is untrue. It was not until after the Petitioner was arrested and removed and after the Petitioner was removed from the fairgrounds that Judge Krueger finally stopped. There is no evidence that Krueger was ever threatened with expulsion or arrest and there is much in the record to suggest that he was not.

So what, according to the court appeals, is the difference with the Petitioner and Judge Krueger that legitimizes the discriminatory actions of the Respondents? The court of

appeals asserts: "We believe Appellant's open refusal to comply with Rule No. 2 distinguishes him from Judge Krueger." When warned, the Petitioner acknowledged he would continue whereas when Judge Krueger was warned, he did not openly refuse but continued anyhow. This subterfuge is pierced by the fact that fair manager Bill Lowe has Petitioner arrested and removed but his admission that he might not have had Judge Krueger arrested in Krueger refused to cease campaigning on the county fairgrounds.

Even from the start, when the Petitioner stayed in front of his booth and was not passing out campaign literature on the fairgrounds, he was told, on September 18, 1994 by Christopher Frentsos to stay behind his booth, while Judge Krueger was never stopped from passing out his campaign literature in front of his booth.

It is evident that the Respondents acted in concert in violation of 42 USC 1985(1) and most certainly in violation of 42 USC 1985(3).

REASONS FOR GRANTING THE PETITION

This case deals with the question of whether or not a citizen has the right to exercise one of the most protected forms of free speech , political speech, in a nondisruptive manner, on public property under the control of a political subdivision of the State of Ohio . It strikes at the heart of the U. S. Constitution and the consequent federal and state statutes and the Ohio Constitution, art. I, sec. 11, dealing with free expression.

In this case, the Petitioner was informing his fellow

citizens of his candidacy for the United States Congress and handing out a sheet — to those desiring it — describing his positions on various issues, in areas of the Delaware County Fairgrounds open to the public. As a result, the Petitioner was threatened and falsely arrested, his property was seized, his contract was broken, he was evicted from public property, and he was subsequently libeled and slandered and intimidated in order to prevent him from doing so.

The Petitioner was exercising the most highly protected (and rightly so) form of free speech, that of political free speech. For if political free speech is not protected, then the very basis upon which this country is supposed to be founded on is lost. If a person running for public office cannot inform others that he/she is running for that public office on public property, at times and in places that are open to the public, free from the interference of agents or agencies acting under color of state law , then the ability of the government to properly function as a democracy or a representative democracy is lost and with it is lost the very legitimacy of that government.

Indeed, not only should a person have the right to engage in activities such as running for public office on public property, at times and in places that are open to the public without interference from agents or agencies acting under color of state law, it is the responsibility of agent or agencies acting under color of state law (such as the police or the courts) to protect this right, for if it is not so protected, it cannot exist in the face of illegal interference.

Agents or agencies acting under color of state law such as county fair boards cannot use subterfuge to interfere with the

basic right of informative political free speech. They cannot abolish it by claiming that candidates are really vendors and that they have the right to prohibit political free speech to protect their interests and the interests of others. Are we to conclude that candidates must now get vendor's licences before running for office?

In this case, the court of appeals cited "Exhibitor's Rule No. 2"

> 2. Confine all activities to the space you have rented. Roving vendors are prohibited by Ohio law. You may not use aisles or walkways to sell or demonstrate your product or service.

and claimed that "Exhibitor's Rule No. 2" did not "infringe on appellant's First Amendment rights". What the court did not address was whether "Exhibitor's Rule No. 2" was even applicable to the Petitioner. This rule is comprised of three sentences. The second sentence is obviously not applicable to the Petitioner. The Petitioner was not a vendor, was not vending, and did not require a vendor's licence for any of his activities at the fair. The third sentence did not apply. He obviously was not selling or demonstrating a product or a service. He was clearly not soliciting but giving out information . In United States v. Marsha Kokinda, et al. 497 US 720, 111 L Ed 2d 571 110 S Ct 3115, the majority opinion acknowledged the difference between distributing literature and selling or soliciting.

Furthermore, taken in the context of the second sentence of "Exhibitor's Rule No. 2", the third sentence referred to vendors and was obviously not applicable to the Petitioner. Similarly, the first sentence must be taken in context of sentences two and three. Thus, the first sentence must be

construed as being limited by the two remaining sentences. The Petitioner was not involved in selling or demonstrating products or services, thus "Exhibitor's Rule No. 2" did not apply to him.

Furthermore, even if the rule was constitutional on its face, it was applied in an unconstitutional fashion with regard to its enforcement. Respondents failed to enforce "Exhibitor's Rule No. 2" against Judge Everett Krueger in the same manner as it did against Petitioner. The court of appeals noted that Judge Krueger was warned that he refrain from passing out campaign literature on either September 17, 18, or 19, 1994 and the record shows he was still passing out literature on September 21, 1994. The statement by the court of appeals that "when warned, Judge Krueger acknowledged said warning(s) and complied" is untrue. It was not until after the Petitioner was arrested and removed from the fairgrounds that Judge Krueger finally stopped. There is no evidence that Krueger was ever threatened with expulsion or arrest and there is much in the record to suggest that he was not.

So what, according to the Court of Appeals, is the difference with the Petitioner and Judge Krueger that legitimizes the discriminatory actions of the Respondents? The court of appeals asserts: "We believe appellant's open refusal to comply with Rule No. 2 distinguishes him from Judge Krueger." When warned, the Petitioner acknowledged he would continue whereas when Judge Krueger was warned, he did not openly refuse but continued anyhow. This subterfuge is pierced by the fact that the fair manager, Bill Lowe, had Petitioner arrested and removed, but by own his admission, he might not have had Judge Krueger arrested if Krueger refused to cease campaigning on the county fairgrounds.

Short-sighted interests, such as catering to the 'good ole boy' system or running a fair like clockwork by having dictatorial policies reminiscent of Mussolini's Italy, do not outweigh the ultimate functions of the fair itself (one of which is to serve as a social meeting place) or take away the protection that is provided for political free speech by the U. S. Constitution and inferior laws.

This case is not a trivial one. Allowing the Respondent's behavior to go uncorrected or unpunished would be a serious blow not only to the Constitutionally protected right to free speech of this Petitioner, but also to the same rights of others who, because they are not one of the 'good ole boys', do not receive preferred treatment (as did others in this case such as candidate Everett Krueger). This court must grant jurisdiction to hear this case and review the erroneous and dangerous decision of the court of appeals which threatens the basic Constitutional rights of every citizen in the State of Ohio.

CONCLUSION

The petition for a writ of certiori should be granted.

Respectively submitted,

JOHN YIAMOUYIANNIS
Pro Per
6439 Taggart Road
Delaware, Ohio 43015
(614) 548-5340

Date: 7/10/97

NO._____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

JOHN YIAMOUYIANNIS
Petitioner

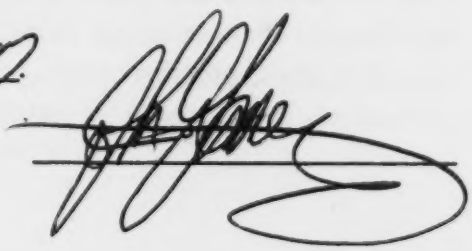
v.

WILLIAM LOWE,
THE DELAWARE COUNTY AGRICULTURAL SOCIETY,
THE DELAWARE COUNTY FAIR BOARD,
CHRISTOPHER FRNETSOS, AND JOHN DOES, 1-10
Respondents

Proof of Service

I, John Yiamouyiannis, do swear and declare that on this date, July 14, 1997, as required by Supreme Court Rule 29, I have served the enclosed PETITION FOR A WRIT OF CERTIORI on Robert L. Eblin, Arter and Hadden, 10 West Broad Street, Columbus, Ohio 43215, attorney for the Respondents, by depositing an envelop containing the above document in the United States mail addressed to him and with first class postage prepaid. I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 14, 1997.



APPENDIX A

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JUDGES:
Hon. William B. Hoffman, P.J.
Hon Sheila G. Farmer, J.
Hon. John W. Wise, J.

JOHN YIAMOUYIANNIS
Plaintiff-Appellant

vs. Case No. 96CAE-05-024

WILLIAM LOWE, THE DELAWARE AGRICULTURAL SOCIETY, THE DELAWARE COUNTY FAIR BOARD, CHRISTOPHER FRENTSOS, AND JOHN DOES, 1 - 10.
Defendants-Appellees

OPINION

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas

Case No. 95CV-C-03-077

JUDGMENT: Affirmed

DATE OF JUDMENT ENTRY: January 3, 1997

APPEARANCES:

For Plaintiff-Appellant
JOHN YIAMOUYIANNIS
6439 Taggart Road
Delaware, Ohio 43015

For Defendants-Appellees
J. MICHAEL OZIER
D. DAVID CARROLL
Schwartz, Warren & Ramirez
41 South High Street, Suite 2300
Columbus, Ohio 43215

Hoffman, P.J.

Plaintiff-appellant John Yiamouyiannis appeals the judgment of the Court of Common Pleas of Delaware County, awarding summary judgment in favor of defendants-appellees William Lowe, the Delaware Agricultural Society, the Delaware County Fair Board and Christopher Frentsos.

STATEMENT OF THE FACTS

In the fall of 1994, appellant John Yiamouyiannis became a candidate for the U. S. House of Representatives for the 12th Congressional District. On September 6, 1994, appellant approached the appellee Delaware County Agricultural Society (hereinafter Society) for the purpose of renting exhibition space at the 1994 Delaware County Fair, scheduled to take place from September 17, 1994 to September 23, 1994. Appellant was presented with an Exhibitor's Contract, which contained a Rule stating that exhibitors "must confine all activities to the space you have rented" and "may not use aisles or walkways to sell or demonstrate your product or service." (Exhibitor's Contract at 2). Appellant signed the contract and obtained an exhibition booth space for the duration of the Fair.

On Sunday, September 18, 1994, appellee Christopher Frentsos (Concessions Manager and member of the Board of the appellee Society) approached appellant and one of the appellant's coworkers and warned them not to distribute literature or solicit outside of the exhibition booth. (Yiamouyiannis Depo., Vol. 1 at 53-6). Despite Frentsos' warning, on Wednesday, September 21, 1994, appellant began passing out campaign literature near the grandstand. (Yiamouyiannis Depo., Vol. 1 at 47.69). Appellee William Lowe (Fair Manager and member of

the Board of the appellee Society) approached appellant and asked him to confine the distribution of his campaign literature to his booth. (Lowe Depo. at 16-7). Appellant allegedly refused and told Lowe to "get away" from him. (Yiamouyiannis Depo., Vol. 1 at 70, 73-4; Lowe Depo. at 18).

At this point, Lowe returned to the exhibition space and ordered that appellant's exhibition booth be dismantled by Fair personnel. Upon learning that his booth was being dismantled, appellant returned to his booth. When he arrived there, appellee Lowe and Sheriff's Deputy Jessie Williams were waiting for him. Deputy Williams requested appellant leave the fairgrounds but appellant refused. (Yiamouyiannis Depo., Vol. 1 at 76; Lowe Depo. at 120-21). Lowe then called Major Gil Borchers of the Sheriff's Department, When Borchers arrived, he instructed appellant to leave the scene or face arrest. Appellant refused to leave and was arrested on the charge of criminal trespass. (Lowe Depo. at 51; 73-4; 125-6).

A complaint charging appellant with criminal trespass was filed and the case proceeded in the Court of Common Please of Delaware County. In November, 1994, the case was dismissed on a nolle prosequi. In exchange for this dismissal of the criminal trespass charge, appellant signed a general release of all claims against the City of Delaware, the Delaware County Municipal Court, the Delaware City Prosecutor, the County of Delaware and the State of Ohio for actions taken in arresting and prosecuting him. (November 4, 1994 Release).

STATEMENT OF THE CASE

On March 7, 1995, appellant filed a complaint in the Court of Common Pleas of Delaware County against appellees herein,

alleging breach of contract, malicious prosecution, defamation, violations of 42 U.S.C. Section 1981 and sequential civil rights statutes, and illegal threats.

On October 23, 1995, appellees filed a Motion for Summary Judgment. Appellant filed a Reply and a Supplemental Memorandum Opposing Summary Judgment. On the date of the hearing on appellees' motion, Judge Henry Shaw recused himself from the case. Judge Robert Walker was subsequently appointed to hear the case. Appellant then filed another Supplemental Memorandum on the appellees' Motion.

On April 19, 1996, Judge Walker issued his Memorandum Decision awarding summary judgment in favor of appellees.

It is from this Entry that appellant now appeals. Due to the length of appellant's five assignments of error, we hereby attach hereto and incorporate herein said assignments as an appendix to this decision

I. & II.

In that appellant's first and second assignments of error both relate to his argument the trial court erred in awarding summary judgment to appellees on appellant's civil rights claims, we will address said assignments of error together.

Summary judgment motions are to be resolved in light of the dictates of Civ. R. 56. Said rule has recently been reaffirmed by the Ohio Supreme Court in State ex rel. Zimmerman v. Tompkins (1996), 75 Ohio St.3d 447, 448:

Civ. R. 56(C) provides that before summary judgment may

be granted, it must be determined that (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made. State ex rel. Parsons v. Fleming (1994), 68 Ohio St.3d 509, 511, 628 N.E.2d 1377, 1379, citing Temple v. Wean United, Inc. (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267, 274.

As an appellate court reviewing summary judgment motions, we must stand in the shoes of the trial court and review summary judgments using the same standard and evidence as the trial court. Smiddy v. The Wedding Party, Inc.(1987), 30 Ohio St.3d 35.

Appellant first claims the trial court erred in determining appellees were not acting under color of state law pursuant to 42 U.S.C. Section 1983.

We agree. The appellee Society is a creature of Ohio statutes. See: R.C. Chapter 1711. et seq. See also: Lowe Depo. at 130. Pursuant to these statutes, the record reflects appellees received approximately $42,000 from Delaware County and the State for the Delaware County Fair. (Lowe Depo. at 134). In addition, appellees receive the benefit of rent-free use of County land as the fairgrounds and the State pays for the insurance on the buildings located on said land. (Lowe Depo. at 144). In light of the above, we find there is sufficient state action in the instant case to support a claim under 42 U.S.C. Section 1983. For a similar result, see: Int'l Society for Krishna Consciousness v. Evans (S.D. Ohio 1977), 440 F. Supp. 414, 419. Accord-

ingly, this portion of appellant's argument in support of his first assignment of error is well-taken.

We must then proceed to consider appellant's claim that appellees unconstitutionally infringed his First Amendment right to free speech by requiring him to confine his distribution of campaign literature to his exhibition booth pursuant to Exhibitor's Rule No. 2.

Appellee Society is organized under State law and is authorized to adopt a constitution and bylaws and select officers in conformity to law and the rules of the department of agriculture. R.C. Chapter 1711.01. Under this provision, appellee Society promulgated a "Rules and Information Sheet for Indoor Exhibitors" at the 1994 Delaware County Fair which contained the following Rule (hereinafter Exhibitor's Rule No. 2):

2. Confine all activities to the space you have rented. Roving vendors are prohibited by Ohio law. You may not use aisles or walkways to sell or demonstrate your product or service.

Appellee William Lowe testified the above rule was based upon the rules of the Department of Agriculture of Ohio. (Lowe Depo. at 62). It is the issue of whether this Rule infringes on appellant's First Amendment rights that will be examined in this opinion.

The First Amendment guarantees the right to publicly communicate views and to express dissension. However, it is well-settled that said Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired. Heffron v. Int'l Society for Krishna Consciousness (1981), 452 U.S. 640, 647. Rather, activities

protected by the First Amendment are subject to reasonable time, place and manner restrictions. Id. See also: Grayned v. City of Rockford (1972), 408 U.S. 104; Planned Parenthood v. Project Jericho (1990), 52 Ohio St.3d 52, syllabus paragraph two. The U.S. Supreme court has approved time, place and manner restrictions so long as they (1) are content-neutral, (2) are tailored to serve a significant government interest, and (3) leave alternative channels of communication open. See: Heffron, supra at 648; Planned Parenthood, supra at syllabus paragraph two.

The first criterion for a valid time, place and manner restriction is that the restriction "may not be based upon either the content or subject matter of speech." Heffron, supra at 648 citing Consolidated Edison Co. v. Public Service Comm'n (1980), 447 U.S. 530, 536. Exhibitor's Rule No. 2 qualifies in this respect because it applies evenhandedly to all who wish to distribute written material or to solicit funds. Further, appellant has not claimed or presented any evidence to indicate appellees' method of allocating space is discriminatory or subject to arbitrary application. Accordingly, we believe the Exhibitor's Rule No. 2 satisfied the first criterion for a reasonable time, place and manner restriction.

Exhibitor's Rule No. 2 must also "serve a significant governmental interest" to be a valid time, place and manner restriction. The U.S. Supreme Court has held that the State's interest in maintaining the orderly movement and control of a crowd at a fair is a "substantial consideration" and sufficient to satisfy the requirement that a time, place or manner restriction must serve a substantial state interest. Heffron, supra at 654. Accordingly, we believe the rule at issue herein satisfies this criterion for a valid time, place and manner restriction under the facts of the instant case.

Finally, it must also be demonstrated that the challenged rule leaves open ample alternative channels for communication of the information. We believe Exhibitor's Rule No. 2 satisfied this criterion as well. Exhibitor's Rule No. 2 does not operate to exclude appellant from the fairgrounds. Further, William Smith (Board member of appellee Society) testified appellant would not have been prevented from mingling with the crowd and orally discussing his views. (Smith Depo. at 89-90). In light of the above, we find Exhibitor's Rule No. 2 does provide adequate means to communicate views on the fairgrounds. Accordingly, we find Exhibitor's Rule No. 2 is a valid and reasonable time, place and manner restriction under the circumstances of the instant case.

Appellant argues, however, that, even if it is constitutional on its face, said Rule is applied in an unconstitutional and discriminatory fashion with regard to its enforcement. Specifically, appellant maintains appellees failed to enforce Exhibitor's Rule No. 2 against Judge Everett Krueger in the same manner as it did against appellant.

The record reflects appellant was warned not to distribute campaign literature outside of his booth on two separate occasions; i.e. on Sunday, September 18, 1994 by appellee Christopher Frentsos and on Wednesday, September 21, 1994 by appellee Lowe. When confronted the second time, appellant told Lowe to "get away" from him and refused to comply with Lowe's warning that he refrain from passing out campaign literature outside his booth. (Yiamouyiannis Depo. at 70, 73-4; Lowe Depo. at 18).

The record is somewhat unclear as to the warning(s) received by Judge Krueger regarding the distribution of campaign litera-

ture outside his booth space. Judge Krueger testified he was warned on one occasion by Fair personnel to refrain from distributing campaign literature outside the Republican booth space on either Saturday, September 17, 1994, Sunday, September 18, 1994 or Monday, September 19, 1994. (Krueger Depo. at 9, 16, 18). Responding to numerous complaints, William Smith testified he warned exhibitors at the Republican booth regarding the distribution of campaign literature on Monday, September 19, 1994. (Smith Depo. at 91). Appellee Lowe testified he asked Judge Krueger to stop distributing campaign literature outside his booth space on the evening of Wednesday, September 21, 1994, Lowe Depo at 88). Finally, Sheriff's Deputy Loren Pool testified that on Wednesday, September 21, 1994, he told Judge Krueger that, if he was handing out literature as alleged by the appellant, he should cease and desist from so doing. (Pool Depo. at 14). The record is clear that, when warned, Judge Krueger acknowledged said warning(s) and complied.

Upon review of the record and viewing the evidence in a light most favorable to the appellant, we believe the trial court did not err in awarding a summary judgment in appellees' favor on this aspect of appellant's civil rights claim. The record reflects that, when Judge Krueger was warned not to distribute campaign literature outside his booth space on a least one, and possibly two occasions, Judge Krueger acknowledged said warning(s) and complied. Appellant, on the other hand, became hostile after the second warning on September 21, 1994 and stated he would not comply with Exhibitor's Rule No. 2. In fact, the record reflects appellant continued to distribute campaign literature in the grandstand area after being warned not to do so. We believe appellant's open refusal to comply with Rule No. 2 distinguishes him from Judge Krueger and defeats his claim

regarding unconstitutional discrimination in the enforcement of Rule No. 2.

Accordingly, appellant's second assignment of error is overruled.

III.

In his third assignment of error, appellant argues the trial court erred in awarding summary judgment in appellee's favor on his breach of contract claim. Specifically, appellant claims there exists a genuine issue of material fact regarding whether appellees' act of dismantling appellant's fair booth and evicting him from the fairgrounds constitutes a breach of the Exhibitor's contract signed on September 6, 1994.

We disagree. Having found Exhibitor's Rule No. 2 to be a valid and enforceable time, place and manner restriction, see resolution of appellant's second assignment of error supra, we believe appellant's clear and adamant refusal to heed said Rule constituted a breach of the contract by appellant and entitled appellees to dismantle appellant's booth and have him removed from the fairgrounds.

Accordingly, appellant's third assignment of error is overruled.

IV.

In his fourth assignment of error entitled "Malice", appellant argues the trial court erred in awarding summary judgment in appellees' favor on appellant's (1) illegal seizure of property claim; (2) malicious prosecution claim; (3) defamation claim; and (4) illegal threats/intimidation claim.

With regard to appellant's illegal seizure of property claim, the record reflects appellees dismantled appellant's booth and removed the objects contained in said booth to one of appellant's co-workers vans after appellant refused to comply with appellees' second warning that he confine the distribution of his campaign literature to his booth. (Frentsos Depo. Vol. II at 13-6). Having found appellees did not breach the Exhibitor's Contract by dismantling the booth and evicting appellant from fairgrounds, see resolution of appellant's third assignment of error supra, we further find the removal of objects contained in the booth from the fairgrounds and the placement of said objects in appellant's co-worker's van does not constitute an "illegal seizure of property". Accordingly, this argument in support of appellant's fourth assignment of error is without merit.

Appellant next argues the trial court erred in awarding summary judgment in appellees' favor on his malicious prosecution claim.

We disagree. In exchange for the dismissal of the criminal trespass charge, appellant signed a general release of all claims against the City of Delaware, the Delaware County Municipal Court, the Delaware City Prosecutor, the County of Delaware and the State of Ohio for actions taken in arresting and prosecuting him. (November 4, 1994 Release). Pursuant to this release, we find appellant has waived his malicious prosecution claim as a matter of law. Accordingly, this argument in support of his fourth assignment of error is without merit.

Appellant next claims the trial court erred in awarding summary judgment in appellees' favor on his defamation claim.

Defamation has been defined as a false publication causing

injury to a person's reputation, or exposing him to public hatred, contempt, ridicule, shame or disgrace, or affecting a person adversely in his or his trade, business or profession. Matalka v. Lagemann (1985), 21 Ohio App. 3d 134 at syllabus paragraph one. In addition, if the allegedly defamatory statement involves a public figure, a plaintiff must prove the defendant spoke with actual malice. New York Times Co. v Sullivan (1964) 376 U.S. 254, 285-6; Scott v. News-Herald (1986) 25 Ohio St.3d 243. The term "actual malice" has been defined by the Ohio Supreme Court as follows:

> Actual malice may not be inferred from evidence of personal spite, ill-will or intention to injure on the part of the writer. Rather, the focus of the inquiry is on the defendant's attitude toward the truth or falsity of the publication and a public official may recover only upon clear and convincing proof of actual malice. There must be a showing that false statements were made with a "high degree" of awareness of their probable falsity. (Citations omitted).

Dupler v. Mansfield Journal Co., Inc. (1980), 64 Ohio St.2d 116, 119.

Appellant constituted a public figure at the time the allegedly defamatory statements were made because of his candidacy for the U.S. House of Representatives for the 12th Congressional District. Consequently, in addition to the elements of defamation outlined in *Matalka, supra*, appellant is also required to demonstrate the existence of "actual malice" on the part of the appellees in order to survive summary judgment of this claim.

Upon review of the record, we find appellant has failed to set forth evidentiary quality materials demonstrating appellee's

allegedly defamatory statements to the media regarding appellant's conduct at the fairgrounds and subsequent arrest were made with "actual malice", i.e. a "high degree of certainty of their probable falsity." *Dupler, supra.* Although appellant stated he believed said statements were false, appellant failed to point to any evidence in the record demonstrating appellees made said statements with an awareness of their falsity. Accordingly, we find this argument in support of appellant's fourth assignment of error to be without merit.

Finally, appellant maintains the trial court erred in awarding summary judgment in appellees favor on his illegal threats/ intimidation claim.

Appellant fails to cite any authorities, establishing the existence a cause of action called "illegal threats" or "intimidation." Accordingly, we find the trial court did not errin awarding summary judgment in appellees favor on this claim.

V.

In his fifth and final assignment of error, appellant argues the trial court erred in awarding summary judgment in appellees' favor on the causes of actioncontained in his complaint.

In light of apellant's first, second, third, and fourth assignments of error, supra, we find this assignments of error to be without merit.

Appellant's fifth assignment of error is overruled.

For the foregoing reasons, the judgment of the Court of Common Pleas of Delaware County is affirmed.

By Hoffman, P.J.
Farmer, J., and
Wise, J. concur,

William B. Hoffman
Sheila B. Farmer
John W. Wise

APPENDIX TO APPENDIX A

Assignments of Error Claims Presented for Review

Color of State Law

Claim #1. The presiding judge erred in finding, as appellant claimed, that the appellees' activities were actionable under color of state law. O5:1

Civil Rights Violations

Claim #2. The presiding judge erred in finding contrary to appellant's claims that the appellees — by restraining appellant from passing out information regarding his Congressional campaign, by asking him to leave the fairgrounds, by threatening to throw him off the fairgrounds, by arresting him, by evicting him from the fairgrounds for trespassing, by breaking down his booth at the fair and/or evicting his coworkers — individually and/or severally, did not violate his Constitutional rights, federal civil rights statutes, specifically 42 USC 1981, 42 USC 1983, 42 USC 1985(1), and 42 USC 1985(3), other federal statutes, state statutes, and/or the Ohio Constitution — because he passed out literature regarding his Congressional campaign within the area prescribed for vendors in ORC 1711.12 and/or outside his exhibit area. O1-O6

(a) The presiding judge erred in dismissing appellant's claim (under count 4 of his complaint) that he had been denied his right to free speech. According to the judge: "There is no 'freedom of speech' problem here." O5:2
(b) The presiding judge erred in saying that the terms of the Indoor Exhibitor Contract are "clear, concise, and unambiguous". O4:2
(c) The presiding judge erred in saying that "the interaction of the relevant defendants at the time of the arrest of the Plaintiff have nothing to do with the case". O3:3
(d) The presiding judge erred in ignoring appellant's claim (under count 4 of his complaint) that he had been denied his right to equal protection of the law as guaranteed under the 14th Amendment of the U.S. Constitution or implicitly finding that the appellant's 14th Amendment rights had not been violated. O1-O6 Specifically, the presiding judge erred in saying that "the actions of Judge Krueger . . . have nothing to do with the case". O3:3

Breach of Contract

Claim #3. The presiding judge erred in not holding as appellant claimed (under count 1 of his complaint) that the appellees had violated their contract with the appellant, but finding that the appellant had violated his contract with the appellees.
(a) The presiding judge erred in claiming that Plaintiff was a vendor or a roving vendor. O3:4-O4:2
(b) The presiding judge erred in claiming that Plaintiff was hawking his willingness to enter the Congress of the United States. He disregarded that there was no evidence presented that Plaintiff asked for the vote of even one
person, and did not even do so in the campaign literature he distributed. O4:1

(c) The presiding judge erred in claiming that Plaintiff solicited votes from the electorate more than four feet from the area of his contracted space. O4:1
(d) The presiding judge erred in disregarding the fact that Plaintiff was threatened even when he stayed within the area four feet from his contracted space. O1-O6
(e) The presiding judge erred in saying that the appellant admits that he was in violation of the contract. "By his own admission, the Plaintiff was in violation of the terms of this contract." O3:4
(f) The presiding judge erred in saying that "the contract was violated by the actions of the Plaintiff." O5:2

Malice

Claim #4. The presiding judge erred in not finding as appellant claimed (under count 4 of his complaint) that the appellees had illegally seized his property.
(a) The presiding judge erred in not finding as appellant claimed (under count 2 of his complaint) that the appellees had recklessly had appellant falsely arrested. O1-O6
(b) The presiding judge erred in implicitly finding contrary to appellant's claim (under count 3 of his complaint) that the appellees had not willfully made false and defamatory statements of fact about him to the media. O4:3- O5:0
(c) The presiding judge erred in claiming that Plaintiff did not meet the tests of New York Times v. Sullivan and Scripps-Howard. O4:3-O5:0
(d) The presiding judge erred in not finding as appellant claimed (count 6 of his complaint) that the appellees had attempted to intimidate him to stop him from filing his complaint. O5:3-O6:0

Summary Judgment

Claim #5 The presiding judge erred in granting summary judgment to the appellees. O6:2
(a) The presiding judge erred in disregarding and/or misrepresenting most of the evidence presented including, e.g., attorney general's opinions, testimony, and citations to other cases. O1-O6
(b) The presiding judge erred in not construing the evidence most strongly in appellee's favor and not giving the case the construction and application of the law of Ohio most strongly in favor of the appellant. O3:1 & O6:1

IN THE COURT OF APPEALS FOR
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JOHN YIAMOUYIANNIS
Plaintiff-Appellant

vs. JUDGMENT ENTRY

WILLIAM LOWE, THE DELAWARE
AGRICULTURAL SOCIETY, THE
DELAWARE COUNTY FAIR BOARD,
CHRISTOPHER FRENTSOS, AND
JOHN DOES, 1 - 10. Case No. 96CAE-05-024
Defendants-Appellees

Ofr the reasons set forth in the MEMORANDUM-OPINION on file, the judgment of the Court of Common Pleas of Delaware County, Ohio, is affirmed

William B. Hoffman
Sheila B. Farmer
John W. Wise

APPENDIX B

IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO
JOHN YIAMOUYIANNIS,
Plaintiff,
Case No. 95CV-C-03-077
vs.
Memorandum
WILLIAM LOWE, et al.,
Defendants.

This matter arose on March 7, 1995, when the Plaintiff, Dr. John Yiamouyiannis, filed in this court a Complaint with Jury Demand attached, against William Lowe, Delaware Agricultural Society, Delaware County Fair Board, Christopher Frentsos and John Does 1 through 10. This complaint contained six causes of action. Actual damages as well as punitive damages were sought by the Plaintiff and attached to the Complaint were several documents one of which was the Indoor Exhibitor contract between the Plaintiff and the Delaware County Fair signed by the Plaintiff as an exhibitor and a representative of the Defendant Delaware County Fair. There is also attached a copy of a complaint for Criminal trespass filed by the City of Delaware, Ohio, against the Plaintiff in this cause in the Delaware County, Ohio, Municipal Court.

To the Complaint in this Court, the Defendants responded by filing their answer on behalf of all the defendants herein denying the several causes of action filed by the Plaintiff and setting up a number of defenses and asking for their costs and attorneys' fees.

Thereafter, the case proceeded with requests for documents and by the taking of sundry depositions.

On October 23, 1995, the several Defendants filed a motion in this Court, supported by affidavits attached thereto for Summary Judgement under Civil Rule 56 of the Ohio Rules of Civil Procedure. The Plaintiff filed a reply to that motion and filed a motion pursuant to Civil Rule 56 (f) for a continuance of the hearing on the motion for summary judgment in order to supplement his reply. This response contained several exhibits (including an affidavit from the Plaintiff and one from Robin Benedict).

The several Defendants responded to that "Reply" and the Plaintiff supplemented his memorandum (to which is attached an affidavit from a Betty Arnspiger).

The entire motion for summary judgment was then set for argument before the Court on April 2, 1996. The Court was advised that the Plaintiff was in California on some personal business. The counsel for the several defendants indicated to the Court that he would waive oral argument on behalf of his clients and that the Court could proceed to rule on the documents in the case. On contacting the Plaintiff in California, the Plaintiff agreed that the Court could proceed to rule if the Plaintiff could file an [sic] written memorandum. The court agreed that the Plaintiff could do so and that document having been filed, the Court will now proceed to rule on the several Defendants' combined motion for summary judgment.

The Court has had the benefit of all the papers filed herein, as well as all the law appropriate and affidavits and discovery that is a part of the cause. It is a plethora of paper, as one can imagine.

There is no need to set forth the facts and background that brought about this case. They are all too clear to the parties and to the Court.

Civil Rule 56 of the Ohio Rules of Civil Procedure is an outgrowth of a similar rule in the Federal Court procedure. The whole idea is that a Court, after receipt of such a motion, shall review the pleadings; depositions; answers to interrogatories; written admissions; affidavits; transcripts of evidence in the pending case; and written stipulations of fact. The Court has reviewed such of this material as is a part of the file.

Thereafter, the Court is to determine if there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. The Rule admonishes the Court that a summary judgment shall not be made unless from the evidence and stipulations, if any, that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made. The rule further requires that the party against whom the motion to summary judgment is made, is entitled to have the evidence and the stipulations, if any, construed most strongly in his favor.

It is most important that a party cannot rest upon his pleadings nor can he ask the Court to "assume" that something would or could be done or action taken. This matter must rest upon the materials that are part of the case and which have been outlined above.

There is a great deal of material in this case relating to the candidacy of one Everett Krueger for the new position of Common Pleas judge of Delaware County. This Court does not know Judge Krueger but it does know that the actions of Judge Krueger and the interaction of the relevant defendants at the time of the arrest of the Plaintiff have nothing to do with the case at bar. That issue is between Judge Krueger and the defendants and does impinge upon this case.

The Court has had an opportunity to review the terms of the Indoor Exhibitor contract and the Court is constrained to advise that this contract is couched in terms that are in clear, concise and unambiguous language. By his own admission, the Plaintiff was in violation of the terms of this contract. A candidate for any office is obviously "soliciting" the support of the electorate. A person, or candidate, who enters into a contract such as is attached to the Plaintiff's complaint, is obliged to conform to the terms of the contract.

The law of Ohio is a part of that contract. Certain activities are clearly forbidden under the clear terms of Ohio Revised Code Section 1711.12. Indeed, the terms of that section are as much a part of the contract as if it were completely rewritten therein. The Plaintiff admittedly is not "hawking" anything but his willingness to enter the Congress of the United States. And in order to achieve that goal, he must solicit votes. Clearly, he solicited votes from the electorate more than four feet from the area he engaged under the Indoor Exhibitor Contract.

That the Plaintiff was arrested for a violation of Ohio Revised Code Section 2911.21, Criminal Trespass, is a fact. But any irregularities attendant upon that arrest were resolved by the release executed by the Plaintiff and approved by the judge of the Delaware County Municipal Court. The terms of that release are couched in terms that are clear and unambiguous and must control all aspects of that incident. It should be noted that the regularly elected judge of the Delaware County Municipal Court, then Judge Krueger, did not approve the entry but rather the release was approved by a judge from a foreign county sitting by assignment of the Chief Justice of Ohio.

The Plaintiff urges that this Court consider that the Defen-

dants, or one of them, defamed the Plaintiff. The Plaintiff does not at any time establish that the defamatory statements meet the test that has been established by the New York Times Co. v Sullivan case (376 U.S. 254 [1964]). Ohio has clearly adopted this standard. The Plaintiff was, and clearly still is, a public figure. He was running for an important political office at the time this incident arose. He is still engaged in presenting himself to the public on issues that are of extreme interest to the electorate as a whole. If the chief of police of a medium sized city is a public official or a public figure, certainly an individual running against another for the "national" office of the Congress of the United States from the congressional district which has Delaware county as a part of that district is a public figure. The Plaintiff does not show with the requisite convincing clarity that one of the Defendants made this statement within the prongs of the Scripps-Howard Broadcasting Company case (35 Ohio St. 3d 215).

It is hard to imagine that the Delaware County Fair is an instrumentality of the government of Ohio. The statutes of Ohio do, indeed, form the basis upon which a fair is established and controlled and regulated but then so does the law of Ohio form the basis upon which private universities are created: large multi-national manufacturing concerns established and headquartered in Ohio; small "Mom and Pop" operations; and other corporations, partnerships and associations that are formed under the aegis of Ohio law.

Clearly, once the contract between the Plaintiff and the fair entity, is abrogated, the relationship of exhibitor and management ceases. There is no "freedom of speech" problem here. There is a contract problem. And that contract is clear in its terms. An [sic] the contract was violated by the actions of the

Plaintiff. It is not necessary that the Defendant fair board or society or any of their employees, officers, or agents spell out additionally what is clearly a part of the contract, whether as a part of the written contract or is a part of the contract by operation of the law of Ohio.

There is but one small issue remaining that the Court must deal with. The Plaintiff suggests that one of the defendants herein (specifically Defendant Lowe), threatened the Plaintiff with further legal problems and specifically that the "Society" and Lowe would seek court costs and attorneys fees if the Plaintiff sued either the Society or Lowe. There is nothing wrong with this statement. As the Defendants point out, this is almost a part of every form book complaint, motion, answer - pleadings in general.

The Court has reviewed very carefully everything appropriate to this cause that is before the Court and which is necessary to make a proper legal determination of the cause. It has given the Plaintiff's case the construction and application of the law of Ohio most strongly in favor of the Plaintiff. The case is found to be wanting under the law of Ohio and the motion of the Defendants for summary judgment is granted.

The complaint of the Plaintiff is dismissed and any trial to a jury that has been previously set is hereby vacated.

The Plaintiff is given exceptions and the Defendants will prepare an entry that complies with this ruling.

Robert D. Walker
Judge - by Assignment

Copies to be sent to Plaintiff and counsel for the several Defendants showing time of filing with the Clerk of this Court.

IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO

JOHN YIAMOUYIANNIS,
Plaintiff, Case No. 95CV-C-03-077
vs.
WILLIAM LOWE, et al., JUDGE WALKER
Defendants. (By Assignment)

JUDGMENT ENTRY

This matter was submitted to the Court for decision on Defendants' Motion For Summary Judgment. The parties having fully briefed both sides of the summary judgment issue and having unanimously waived oral argument, the Court orders as follows:

It is hereby ORDERED, ADJUDGED and DECREED that the Complaint, all claims within it and all Defendants in this action are herewith dismissed with prejudice.

ROBERT D. WALKER
Judge - By Assignment

AGREED:

John Yiamouyiannis, Plaintiff Pro Se
6439 Taggert [sic] Road
Delaware, Ohio 43015

J. Michael Ozier
Schwartz, Warren & Ramirez
41 South High Street, Suite 2300
Columbus, Ohio 43215
Counsel for Defendants Delaware County
Agricultural Society, William Lowe
Christopher Frentsos, and John Does 1-10

APPENDIX C

The Supreme Court of Ohio

1997 Term

John Yiamouyiannis
Appellant — Case No. 97-346

vs.

William Lowe, The Delaware Agricultural Society, The Delaware County Fair Board, Christopher Frentsos, and John Does, 1 - 10.
Appellees — ENTRY

Upon consideration of the jurisdictional memorandum filed in the case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:

Docket Fee, $40, paid by John Yiamouyiannis.

(Delaware County Court of Appeals; No. 96CAE05024)

THOMAS J. MOYER
Chief Justice

Supreme Court, U.S.
FILED
AUG 11 1997
CLERK

No. 97-78

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

JOHN YIAMOUYIANNIS,

Petitioner,

v.

WILLIAM LOWE, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF OHIO

BRIEF IN OPPOSITION

ROBERT L. EBLIN
(Counsel of Record)
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Washington, D.C. • THIEL PRESS • (202) 328-3286

8 pp

QUESTION PRESENTED

Whether Ohio courts appropriately upheld the right of county fair officials to enforce time, place and manner restrictions on fair exhibitors wishing to solicit and distribute literature to fair patrons, based upon Ohio Revised Code § 1711.02 and fair exhibitor rules, under *Heffron v. International Society of Krishna Consciousness, Inc.*, 452 U.S. 640 (1981).

LIST OF PARTIES

The Petition imprecisely lists the parties.

Respondents are:

William Lowe

Christopher Frentsos[1]

Delaware County Agricultural Society

"The Delaware County Fair Board," named as a respondent by Petitioner, is a colloquialism for the Delaware County Agricultural Society, which operates the Delaware County Fair, and is not a separate legal entity.

---

[1] Misspelled in the petition.

STATEMENT OF THE CASE

This case arises out of Petitioner's willful violation of time, place, and manner restrictions on speech imposed by Ohio Revised Code § 1711.12[2] and Exhibitor Rule 2[3] of the Delaware County Fair (the "Fair"). Rather than confine his campaign solicitations and literature distributions to his assigned exhibitor booth, as required by statute and Fair rule, Petitioner persisted in roving the fairgrounds to distribute campaign materials to Fair patrons. Petitioner was ultimately ejected from the fairgrounds when, after repeated warnings, he flatly refused to abide by the statute and rule.

Petitioner's litany of claims against Respondents was dismissed on summary judgment,[4] which was affirmed by the Ohio court of appeals. The Supreme Court of Ohio declined to review the case, deciding that it does not present a substantial constitutional question.

---

[2] Ohio Revised Code § 1711.12 provides:

> During an Ohio state fair or county or independent agricultural society fair, no person shall . . . within the fairground, engage in any solicitation more than four feet from a concession or booth assigned to such person, except that vendors under contract may solicit within the immediate area of a grandstand or coliseum for the purpose of vending food, soft drinks, and souvenirs directly related to the program attraction.

[3] Delaware County Fair Exhibitor Rule 2 provides:

> Confine all activities to the space you have rented. Roving vendors are prohibited by Ohio law. You may not use the aisles or walkways to sell or demonstrate your product or service.

[4] Contrary to Petitioner's urging, the "facts alleged" in the petition need not be assumed to be true "for summary judgment purposes." In ruling against Petitioner on summary judgment, the courts below properly found that no genuine issue of material fact exists and that judgment could be entered in favor of Respondents as a matter of law.

Notwithstanding Petitioner's attempts to enrobe his claims in the United States Constitution, no constitutional question is presented worthy of the Court's review. The Court already has evaluated the type of time, place, and manner restrictions at issue here and found them valid under the First Amendment. *See Heffron v. Int'l Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981). Indeed, Ohio fair rules on solicitation similar to those at issue here were previously upheld in *International Soc. for Krishna Consciousness, Inc. v. Evans*, 440 F. Supp. 414 (S.D. Ohio 1977) (construing time, place, and manner restrictions at the Ohio State Fair).

Federal courts have repeatedly upheld restrictions on an individual's right to distribute literature at a fair, whether the literature is free or for sale. Petitioner's ability to distribute his materials from an assigned booth provided a sufficient alternate channel. Petitioner, moreover, contractually agreed to the restrictions of Exhibitor Rule 2 in applying for a booth at the Fair. The actions taken against Petitioner were strictly the result of Petitioner's willful refusal to abide by time, place, and manner restrictions followed by every other exhibitor and evenhandedly enforced by Respondents.

REASONS FOR DENYING THE WRIT

1. Petitioner Violated Valid Time, Place and Manner Restrictions

The intent and effect of the fair exhibitor rule and the Ohio statute are to regulate the time, place, and manner of speech at fairs to maintain order and safety among fair patrons and exhibitors. Such rules to preserve safety and convenience in a

public forum, and to maintain orderly movement of a fair crowd, are valid under the First Amendment. *See Heffron*, 452 U.S. at 649-650. The restrictions are valid even if the materials were being given away and not sold. *See Heffron*, 452 U.S. at 652-654. The Fair has the same substantial interest in the orderly movement and control of Fair crowds regardless of whether exhibitors are selling or giving away materials. The political (as contrasted to commercial) nature of Petitioner's speech is not a factor. *See Heffron*, 452 U.S. at 655 (upholding restrictions on exhibitors whether they are "commercial, religious, or political").

United States v. Kokinda, 497 U.S. 720 (1990), upon which Petitioner principally relies, concerns the definition of a Postal Service sidewalk as a public forum. *Kokinda* does not mandate the distinction between sales activity, literature distribution, and vote solicitation urged by Petitioner. *Heffron*, in fact, specifically upheld "confining distribution, selling, and fund solicitation activities to fixed locations." 452 U.S. at 654.

Petitioner applied for and was assigned a booth from which he was entitled to campaign and distribute materials. The booth system has been approved by federal courts as "the best available means of accommodating the conflicting interests of the exhibitors in free speech." *Evans*, 440 F. Supp. at 425; *see also Heffron*, 452 U.S. at 650; *Edwards v. Maryland State Fair and Ag. Soc.*, 476 F. Supp. 153 (D. Md. 1979). No constitutional question exists, therefore, as to whether Ohio Rev. Code § 1711.12 and Exhibitor Rule 2 are valid time, place, and manner restrictions applicable to Fair exhibitors including political candidates such as Petitioner.

2. Respondents Enforced Solicitation Restrictions in a Nondiscriminatory Manner

Candidates other than Petitioner who wished to solicit Fair patrons and distribute literature were also required to register for a fair booth and confine their activities to the booth. The record is clear, and Petitioner even admits, that the only other candidate known to have been distributing campaign literature outside his assigned booth was also asked to stop doing so. Petitioner and the other candidate both received multiple warnings about their behavior. Only Petitioner, and no other exhibitor, ultimately refused to comply with Ohio Rev. Code § 1711.12 and Exhibitor Rule 2. *Only* after Petitioner adamantly refused to cease distributing campaign materials outside his booth was he ejected from the Fair. *Only* after Petitioner refused to leave the fairgrounds was he arrested and forcibly removed. The difference in treatment between the two candidates was purely a result of Petitioner's conscious decision to disobey an Ohio statute, disobey Fair exhibitor rules, and disobey the instructions of Fair officials.

As the Ohio court of appeals stated after review of the record, "Petitioner's open refusal to comply with Rule No. 2 distinguishes him from [the other candidate] and defeats his claim regarding unconstitutional discrimination in the enforcement of Rule No. 2." The opinion of the Ohio appellate court on this issue was correct.

3. Petitioner Identifies No Conflict Or Confusion Among The Courts

Petitioner does not contend that the Supreme Court of Ohio "decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals." *See* Sup. Ct. Rule 10(b). Petitioner does not argue that the Supreme Court of Ohio "decided an important federal question in a way that conflicts with relevant decisions of this Court." *Id.* 10(c). At most, Petitioner argues that the Supreme Court of Ohio upheld erroneous factual findings or misapplied a properly stated rule of law, *i.e.* the holding in *Heffron*.

Petitioner fails to present a compelling reason for the Court to revisit previously decided federal questions.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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